



Janice K. Brewer  
Governor

## State Of Arizona Board of Podiatry Examiners

"Protecting the Public's Health"

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Barry Kaplan, DPM; Joseph Leonetti, DPM; Barbara Campbell, DPM;  
M. Elizabeth Miles, Public Member; John Rhodes, Public Member; Sarah Penttinen, Executive Director

### ***BOARD MEETING MINUTES***

August 8, 2012; 8:30 a.m.  
1400 West Washington St., B1  
Phoenix, AZ 85007

Board Members: Barry Kaplan, D.P.M., President  
Joseph Leonetti, D.P.M., Member  
Barbara Campbell, D.P.M., Member  
M. Elizabeth Miles, Secretary-Treasurer  
John Rhodes, Public Member

Staff: Sarah Penttinen, Executive Director

Assistant Attorney General: Montgomery Lee

The agenda items were not reviewed in the order in which they appear in these minutes.

#### **I. Call to Order**

Dr. Kaplan called the meeting to order at 8:30 AM.

#### **II. Roll Call**

Ms. Miles was absent. All other board members were present as well as Ms. Penttinen. Mr. Lee was not present at the beginning of the meeting. Agenda items for which Mr. Lee was not present are indicated as such.

#### **III. Approval of Minutes**

a. July 11, 2012 Regular Session Minutes.

Mr. Lee was not present. Ms. Penttinen advised that due to illness and absence from the office the minutes for the July 11, 2012 Regular Session were not prepared. They will be ready for review at the September board meeting.

b. July 11, 2012 Executive Session Minutes

Mr. Lee was not present.

MOTION: Dr. Kaplan moved to approve the Executive Session minutes as drafted. Dr. Leonetti seconded the motion.

DISCUSSION: There was no discussion on the motion.

VOTE: The motion passed unanimously by voice vote.

#### **IV. Review, Discussion and Possible Action – Probation / Disciplinary Matters**

a. 08-44-C – Alex Bui, DPM: Monthly update.

Mr. Lee was not present. The board reviewed CME completion reports submitted by Dr. Bui for his probation. The total number of hours submitted at this time for review is 11. The board has previously approved 10.25 hours of CME, and Dr. Bui is required to complete a total of 25 hours, so he still needs to complete an additional 3.75 hours.

MOTION: Dr. Campbell moved to approve the 11 hours of CME submitted by Dr. Bui today. Dr. Leonetti seconded the motion.

DISCUSSION: There was no discussion on the motion.

VOTE: The motion passed unanimously by voice vote.

Mr. Lee arrived at the meeting. Ms. Penttinen reviewed for the board members that she previously conducted an inspection at Dr. Bui's office to determine his compliance with his probation requirements. She reviewed one date of service for each of 10 patients. When the board reviewed her inspection report they directed her to issue a subpoena to Dr. Bui for complete patient charts on each of those 10 patients. The board has now received a request from Dr. Bui via attorney Charles Hover to modify the scope of the subpoena to include only dates of service since the time that Dr. Bui's probation order became effective. Mr. Hover also requested that Dr. Bui be allowed to provide patient records in a PDF format on a CD. Dr. Kaplan stated that he feels the board's original subpoena should be enforced and he does not want to accept records on a CD. Dr. Leonetti commented that perhaps Dr. Bui's concern would be a large volume of records, for example the patient he may have been treating for many many years. Ms. Penttinen stated that she received a call from Dr. Bui who stated that essentially that he does not feel any records before his probation agreement went into effect should be relevant. Dr. Bui did not indicate that he had any concerns regarding the volume of records. Dr. Leonetti added that it is always been the board's practice during an investigation to request complete patient charts, and this should not be any different.

Ms. Penttinen addressed Mr. Lee and stated that she believes the cause of Dr. Bui's concern is if the board were to find billing violations that predated his probation agreement that the board would take disciplinary action against him. Mr. Lee address the board and stated that the current probation order would not necessarily preclude the board from taking action based on any complaint the board receives or any information obtained by a compliance check of the probation. Once the board receives information that indicates there may be a problem the board is able to investigate that independently of the probation order. Mr. Lee advised that when the board sends a response to Mr. Hover, an explanation should be provided indicating that it is consistent with board practice to request complete patient charts whenever there is a question raised based on information the board has received. Ms. Penttinen asked Mr. Lee if an official board motion would be necessary at this time in the event that Dr. Bui files a formal objection to the subpoena, rather than an informal request via his attorney, in order to enforce the subpoena in Superior Court. Mr. Lee asked what the original requested response date was on the subpoena. Ms. Penttinen advised the date was July 27, 2012. Mr. Lee suggested that if the board intends to deny Dr. Bui's request to limit the subpoena, they make a motion to deny the request and issue a new subpoena with the new response date. Mr. Lee added that a cover letter should be sent to Dr. Bui's attorney explaining the reasoning behind the board's decision this morning.

MOTION: Dr. Leonetti moved to deny Dr. Bui's request to limit the subpoena and to require that paper copies of the patient charts be submitted. Dr. Kaplan seconded the motion.  
DISCUSSION: There was no discussion on the motion.  
VOTE: The motion passed unanimously by voice vote.

b. 09-17-B – J. David Brown, DPM: Monthly update.

Mr. Lee was not present. Ms. Penttinen advised that she had received a progress report from Dr. Sucher indicating that Dr. Brown is in compliance with all monitoring requirements. Dr. Sucher also submitted copies of all of Dr. Brown's positive test results for prescribed medications. Dr. Sucher reports that Dr. Brown's blood levels are within appropriate therapeutic ranges for his prescribed medications. Dr. Leonetti reviewed the lab reports from Southwest Labs and discussed with Ms. Penttinen and the other board members. The reports appear to be somewhat confusing as to the actual specific quantitative level of medications that have been detected and Dr. Brown's tests. The board members directed Ms. Penttinen to contact Southwest Labs and issue a subpoena to obtain the specific quantitative values of all of Dr. Brown's positive tests.

c. 11-43-B – Elaine Shapiro, DPM: Update on status of appeal of license revocation.

Mr. Lee was not present. Ms. Penttinen advised for informational purposes that the last day for Dr. Shapiro to file an appeal in Superior Court was July 26. The board is not received any notification that such an appeal was filed; therefore, Dr. Shapiro's license revocation became effective on July 27.

**V. Review, Discussion and Possible Action on Administrative Matters**

a. CME approval request from Southern Arizona VA Medical Center.

Mr. Lee was not present. The board members reviewed a CME approval request submitted by the Southern Arizona VA medical center by Dr. James Dancho. The CME request involves that facility's program entitled, "Weekly Seminar in Current Concepts of Podiatric Medicine and Surgery" which provides a total of 41 hours of instruction. Dr. Dancho has submitted similar requests in previous years which the board has approved.

MOTION: Dr. Kaplan moved to approve the CME request. Mr. Rhodes seconded the motion.

DISCUSSION: There was no discussion on the motion.

VOTE: The motion passed unanimously by voice vote.

- b. License renewal applications: The Board will review, discuss and take action to approve, deny, or issue a deficiency notice for the following physicians' license renewal applications and/or dispensing registrations:

William Accomando  
Gary Almas  
Mark Barinque  
Carl Beecroft  
Mary Benjamin-Swonger  
Rodney Berkey  
David Berman  
Randy Bernstein  
Dennis Bobik  
Raymond Bock  
Catherine Brigandi  
Alex Bui  
Sheharyar Chaudhry  
Robert Chiarello  
Dean Clement  
Douglas Cohen  
David Corcoran  
Laureen Cota  
Kelvin Crezee  
Amram Dahukay  
Rajesh Daulat  
John DiMaggio  
Joseph Domanico

Richard Donela  
John Erotas  
Michael Farkas  
Daniel Fulmer  
Louis Geller  
Eugene Goldman  
Scott Gordon  
Hugh Hall  
Jarrett Hamilton  
Whitney Hunchak  
Brian Hutcheson  
David Jenkins  
Gail Johnson  
Paul Ledesma  
Howard Lepolstat  
Andrew Lowy  
Cindy Mann  
Steven Mann  
Mary Maselli  
Paul McMaster  
Peter Merrill  
Stefan Mudryj  
Robin Myers

Kent Peterson  
Deo Rampertab  
J. Barton Ripperger  
Brett Roeder  
Roberta Rowland  
Blair Sandall  
Michael Sekosky  
Paul Shapiro  
Kendall Shumway  
Martin Smith  
Michael Stegman  
Tanya Thoms  
Tharesh Udupa  
Wayne Vetter  
Judianne Walker  
Bradley Whitaker  
Arnold Wolf  
Susan Young  
Serrina Yozsa  
Todd Zang  
Frank Zappa

MOTION: Dr. Kaplan moved to issue a substantive deficiency notice to Dr. Todd Zang regarding an apparent mistake in his CME documentation. Dr. Campbell seconded the motion.

DISCUSSION: There was no discussion on the motion.

VOTE: The motion passed unanimously by voice vote.

MOTION: Dr. Kaplan moved to approve all other renewal applications as listed above. Dr. Campbell seconded the motion.

DISCUSSION: There was no discussion on the motion.

VOTE: The motion passed unanimously by voice vote.

## VI. Executive Director's Report – Review, Discussion and Possible Action

### a. Open complaint status report.

Ms. Penttinen reviewed the report which indicates that there are currently 54 opened complaints. She has received one new complaint in the last month. The total number of open cases includes the nine cases which were originally scheduled to be reviewed today which had been postponed till September. Ms. Penttinen asked the board members for their thoughts regarding future board meetings and how many cases should be scheduled for each board meeting so that there is not an extremely large volume of patient records for them to review for each board meeting. The physician consultants who are completing the investigations are working through their cases fairly quickly and there may be a time when it is not feasible for the board to review all of the completed cases at one particular board meeting. Dr. Leonetti suggested that Ms. Penttinen work with the investigators and review the cases once the investigation report has been received to determine if each particular case is fairly simple or if there are

concerns or complexities within the records which will require additional review time at the board meeting; several cases which are of a low complexity or where there is not a great deal of concern could be placed on the same agenda and the more time-consuming, complex cases will be added accordingly based on the volume of records and the dates of the board meetings.

Dr. Leonetti asked about a pending case against Dr. Bui involving another podiatrist who was the complainant. Ms. Penttinen advised that Dr. Polakof had reviewed the case and was able to determine the specific allegations as this was a billing related matter. A notice letter will be sent to Dr. Bui asking for his written response. Dr. Leonetti also asked about the number of open complaints against Dr. Brown at this time. Ms. Penttinen advised that there are five open cases, one of which is the DEA complaint from 2007. Ms. Penttinen stated that several times in the past she has contacted DEA and attempted to find out their progress on their case and whether or not the board could move forward however DEA does not respond to any of her requests. Ms. Penttinen asked the board whether it would be appropriate to consider administratively closing the board's complaint due to inability to investigate. The board members and Ms. Penttinen reviewed for Mr. Lee that DEA had contacted the board during a time that they were investigating Dr. Brown for possible problems with writing prescriptions for controlled substances. DEA had provided the board with documents which they considered confidential and those documents were inserted into the board's investigation file. However DEA has not come to a conclusion in their case but has advised the board previously that the board may not disclose those documents because they are confidential until they complete their investigation. Dr. Leonetti suggested that Ms. Penttinen attempt to contact DEA one additional time to obtain the status of their investigation of Dr. Brown and report back to the board. The remaining board members agreed. Dr. Kaplan added that he would like to expedite the investigations for any complaints that are currently open against Dr. Brown to determine if any of them also would be referred to a formal hearing in addition to the two cases which have already been so referred. There was discussion among Ms. Penttinen, the board members and Mr. Lee regarding the process of investigating each individual case and the possibility of consolidating cases for the purpose of formal hearing. Mr. Lee stated he can provide specific direction at such a time as the cases are scheduled for formal hearing.

b. Malpractice case report. (None at this time.)

**VII. Call To The Public**

There were no requests to speak during the call to the public.

**VIII. Next Board Meeting Date:**

a. September 12, 2012 at 8:30 a.m.

**IX. Adjournment**

MOTION: Dr. Kaplan moved to adjourn the meeting. Mr. Rhodes seconded the motion.

DISCUSSION: There was no discussion on the motion.

VOTE: The motion passed unanimously by voice vote and the meeting was adjourned at 9:46 a.m.